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Lee Kwan Woh v Public Prosecutor

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FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05–10 OF 2008(A)
RICHARD MALANJUM CJ (SABAH AND SARAWAK), HASHIM YUSOF AND GOPAL SRI RAM FCJJ
31 JULY 2009

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Constitutional Law — Fundamental liberties — Right to fair hearing — Failure to afford accused opportunity to make submission of no case at close of prosecution's case — Whether right to fair trial jeopardised — Whether ruling that prosecution made out prima facie case by trial judge resulted in violation of art 5(1) of the Federal Constitution — Federal Constitution arts 5(1) & 8(1)

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Criminal Law — Dangerous drugs — Trafficking — Appeal against conviction and sentence — Whether ruling in violation of art 5(1) of the Federal Constitution — Whether trial judge failed to judicially appreciate evidence — Whether trial judge failed to draw inference in accused's favour — Dangerous Drugs Act 1952 s 39B(1)(a).

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Acting on information received the Inspector in charge of the case ('the Inspector') laid an ambush at Jalan Selasar 10, Ipoh. The ambush party consisted of several police personnel including a detective Lance Corporal ('the detective'). At about that time the accused arrived at the scene driving a motorcar and parked the car adjacent to house No 52. Then the accused emerged from the car allegedly carrying a white plastic bag ('the bag') containing, what was upon chemical examination found to be, 420g of cannabis. The accused was charged with trafficking 420g of cannabis, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952. In the course of the prosecution's case it was established that the car belonged to the accused's brother and that the latter had given the accused permission to use his car to visit friends. There was also evidence to show that the accused had dropped his brother off at his place of work before he proceeded to the scene and that during the journey the accused's brother had not seen the bag containing the cannabis. At the close of the prosecution case the trial judge had ruled that the prosecution had made out a prima facie case under s 180(1) of the Criminal Procedure Code and that he therefore did not need to hear any submissions. The accused was thereafter convicted by the High Court and sentenced to death. The accused then appealed to the Court of Appeal which affirmed the High Court's decision. This was the accused's

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appeal to the Federal Court against that decision. The first ground of appeal was based on the trial judge's ruling at the close of the prosecution's case. The accused submitted that when the trial judge ruled that the prosecution had made out a prima facie case against the accused without affording the accused an opportunity to make a submission of no case, the trial judge had violated the accused's constitutionally guaranteed right to a fair procedure by virtue of art 5(1) of the Federal Constitution ('Constitution'). The accused further submitted that the expression 'law' in art 5(1) included procedural law. The accused's second ground of appeal was that the trial judge had failed to judicially appreciate the evidence thereby misdirecting himself, and that this misdirection had occasioned a miscarriage of justice. In this respect the accused cited three important evidential points that arose in the course of the prosecution's case from which the trial judge ought to have drawn an inference in the accused's favour but failed to do so. The first evidential point was the accused's allegation that he was arrested in the compound of house No 52 and not when he emerged from the parked car, as alleged in the prosecution case. Although the investigation officer confirmed that the accused had informed her of this fact during the course of her investigation, she failed to investigate this allegation at all. The second evidential point arose when the detective who was part of the ambush party made a statement to the investigating officer that earlier on the day of the accused's arrest, drugs had been recovered from house No 52 and that eight persons were arrested in connection with that raid. However, while giving evidence in court the detective denied that such a recovery or arrest had taken place. The third evidential point related to the fact that if the accused were carrying the bag containing the cannabis in the manner demonstrated to the court by the detective then the accused's fingerprints would have been on the bag but they were not. The two issues to be determined in this appeal were whether there was a violation of the accused's art 5(1) right to a fair trial, and whether the trial judge had failed to judicially appreciate the evidence.

Held, allowing the appeal:

(1) To determine whether the right claimed in the instant case exists at all turns on the interpretation of art 5(1) of the Constitution. As the Federal Constitution is the supreme law of the Federation it ought not to be interpreted by the use of the canons of construction that are employed as guides for the interpretation of ordinary statutes. In addition, the constitution is a document sui generis governed by interpretive principles of its own which imposes a duty on the court to adopt a prismatic approach when interpreting the fundamental rights guaranteed under Part II of the Constitution. Further in interpreting provisions appearing in Part II of the Constitution the court must bear

in mind art 8 that guarantees fairness in all legislative, administrative and judicial action (see paras 7–8, 12).

(2) The expression law in art 5(1) of the Constitution included written law and the common law of England, ie, the rule of law and all its integral components and in both its procedural and substantive dimensions. Thus, it is settled law that the rule of law has both procedural and substantive dimensions. It is also clear from the authorities that it is a fundamental right guaranteed by art 5(1) that a person's life or personal liberty may not be deprived save in accordance with state action that is fair both in point of procedure and substance. When this principle is applied to a criminal case it means that the accused has a constitutionally guaranteed right to receive fair trial, which includes his right to make a submission of no case at the close of the prosecution's case and that he cannot waive this right or be deprived of it. However, in the instant case the accused did not have a fair trial and art 5(1) was violated. Thus, at the close of the prosecution case, a trial court must invite submissions from the accused and it was then open to the accused to elect to either make a submission or not to, but the court could not deny him the opportunity to make a submission of no case to answer (see paras 16, 18–19).

(3) The appellant's case as put to the relevant prosecution witnesses was that he was not apprehended the moment he emerged from his brother's car but that he was arrested in the compound of house No 52. The investigating officer's failure to investigate this allegation despite being informed of this fact during investigation was a serious omission. An inference in the accused's favour ought to have been drawn by the trial judge at the close of the prosecution case when the investigating officer's failure was brought to light. If so, doubt would have been cast upon the evidence of the investigating officer (see para 21).

(4) The detective's previous statement to the investigating officer that the drugs had been recovered from house No 52 and that eight persons were arrested in connection with that raid was inconsistent with his evidence in court. This had the effect of rendering his evidence suspect and would have required the trier of fact to approach that evidence with caution. Further, there was independent evidence that showed that the accused could not have been carrying the bag containing the cannabis because his fingerprints were not on the said bag. This ought to have seriously contradicted the evidence of the detective and the inspector on a material point but unfortunately this point was not addressed by the trial judge. In short there was a large gap in the prosecution case when it closed, as there was a serious doubt as to whether the accused was arrested when he emerged from the car or while in the compound of house No 52; it was highly improbable that the accused was carrying

the bag containing the cannabis; and the prosecution had failed to establish how the drug in question came to be recovered. Moreover there was more than one inference that could be drawn from the prosecution evidence and it is settled law that in such as case the inference most favourable to the accused should have been drawn (see paras 22–23).

(5) A reasonable tribunal properly directing itself on the applicable law and judicially appreciating the evidence would have acquitted the accused at the close of the prosecution's case. The failure of the trial judge to undertake a maximum evaluation of the evidence of the inspector, the investigating officer and the detective had in the present case resulted in a substantial miscarriage of justice (see paras 24 & 26).

[Bahasa Malaysia summary

Bertindak atas maklumat yang diterima Inspektor yang bertanggungjawab untuk kes tersebut ('Inspektor') telah mengatur serang hendap di Jalan Selasar 10, Ipoh. Pasukan serang hendap itu terdiri daripada beberapa orang pegawai polis termasuklah seorang detektif Lans Koperal ('detektif'). Lebih kurang pada masa itu tertuduh tiba di tempat kejadian dengan memandu sebuah kereta dan meletak kereta bersebelahan dengan rumah No 52. Kemudian tertuduh keluar daripada kereta dan dikatakan membawa beg plastik putih ('beg tersebut') yang didapati mengandungi, setelah pemeriksaan kimia, 420g kanabis. Tertuduh telah dituduh kerana mengedar 420g kanabis, satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952. Semasa kes pendakwaan ia telah dibuktikan bahawa kereta tersebut dimiliki oleh abang tertuduh dan bahawa abangnya telah membenarkan tertuduh menggunakan keretanya untuk melawat kawan-kawan. Terdapat juga keterangan yang menunjukkan bahawa tertuduh telah menurunkan abangnya di tempat kerja sebelum dia menuju ke tempat kejadian dan bahawa semasa perjalanan itu abang tertuduh tidak nampak beg tersebut yang mengandungi kanabis. Di penutup kes pendakwaan hakim perbicaraan telah memutuskan bahawa pihak pendakwaan telah menunjukkan kes prima facie di bawah s 180(1) Kanun Prosedur Jenayah dan bahawa beliau dengan itu tidak perlu mendengar sebarang penghujahan. Tertuduh, berikutan itu telah disabitkan oleh Mahkamah Tinggi dan dihukum mati. Tertuduh kemudian telah merayu ke Mahkamah Rayuan yang telah mengesahkan keputusan Mahkamah Tinggi. Ini adalah rayuan tertuduh ke Mahkamah Persekutuan terhadap keputusan tersebut. Alasan pertama adalah berdasarkan keputusan hakim perbicaraan di penutup kes pendakwaan. Tertuduh menghujahkan bahawa apabila hakim perbicaraan memutuskan bahawa pendakwaan telah menunjukkan kes prima facie terhadap tertuduh tanpa memberikan tertuduh peluang untuk membuat penghujahan bahawa tiada kes, hakim perbicaraan telah melanggar hak perlembagaan yang dijamin untuk mendapat prosedur

A adil menurut perkara 5(1) Perlembagaan Persekutuan ('Perlembagaan'). Tertuduh selanjutnya menghujahkan bahawa ungkapan 'law' dalam perkara 5(1) termasuklah undang-undang prosedur. Alasan kedua tertuduh adalah bahawa hakim perbicaraan telah gagal untuk menghayati keterangan secara kehakiman yang kemudiannya beliau telah salah arah, dan bahawa salah arah
B ini telah menyebabkan salah laksana keadilan. Sehubungan ini tertuduh telah menyatakan tiga perkara keterangan penting yang timbul semasa kes pendakwaan yang mana hakim perbicaraan patut membuktikan inferens menyebelahi tertuduh tetapi telah gagal berbuat demikian. Perkara keterangan pertama adalah pengataan tertuduh bahawa dia telah ditangkap di
C kawasan rumah No 52 dan bukan apabila dia keluar dari kereta di tempat letak kereta, seperti yang dikatakan dalam kes pendakwaan. Meskipun pegawai penyiasat mengesahkan bahawa tertuduh telah memaklumkannya tentang fakta ini semasa siasatannya berjalan, dia telah langsung gagal untuk menyiasat tentang pengataan ini. Perkara keterangan kedua timbul apabila
D detektif yang merupakan sebahagian daripada pasukan serang hendap telah membuat kenyataan kepada pegawai penyiasat bahawa sebelum tangkapan tertuduh pada hari tersebut, dadah telah ditemui dalam rumah No 52 dan lapan orang telah ditangkap berkaitan serbuan tersebut. Walau bagaimanapun, setelah memberikan keterangan di mahkamah detektif
E menafikan penemuan atau tangkapan tersebut telah berlaku. Perkara keterangan ketiga adalah berkaitan fakta bahawa jika tertuduh yang membawa beg mengandungi kanabis seperti yang ditunjukkan kepada mahkamah oleh detektif itu maka kesan jari tertuduh semestinya terdapat pada beg tersebut tetapi tidak ditemui. Dua isu yang perlu ditentukan dalam
F rayuan ini adalah sama ada terdapat pelanggaran hak tertuduh mendapat perbicaraan yang adil di bawah perkara 5(1), dan sama ada hakim perbicaraan telah gagal meneliti keterangan secara adil.

G **Diputuskan**, membenarkan rayuan:

(1) Bagi menentukan sama ada hak yang dituntut dalam kes ini sememangnya wujud maka perlu merujuk kepada pentafsiran perkara 5(1) Perlembagaan. Oleh kerana Perlembagaan Persekutuan
H ('Perlembagaan') merupakan undang-undang tertinggi negara ia tidak patut ditafsirkan menggunakan prinsip pentafsiran yang berfungsi sebagai panduan untuk pentafsiran statut-statut biasa. Tambahan lagi, Perlembagaan adalah dokumen sui generis yang dikawal oleh prinsip-prinsip pentafsirannya sendiri yang mengenakan
I tanggungjawab ke atas mahkamah agar menggunakan pendekatan prismatik apabila mentafsir hak-hak asasi yang dijamin di bawah Bahagian II Perlembagaan. Bahkan dalam mentafsir peruntukan-peruntukan yang terdapat dalam Bahagian II Perlembagaan mahkamah hendaklah menggunakan perkara 8(1) yang

menjamin keadilan dalam semua tindakan perundangan, pentadbiran dan keadilan (lihat perenggan 7–8, 12). A

(2) Ungkapan undang-undang dalam perkara 5(1) Perlembagaan termasuklah undang-undang bertulis dan common law England, iaitu rukun undang-undang dan semua komponen pentingnya dan dalam kedua-dua dimensi prosedur dan yang substantif. Oleh itu, adalah undang-undang tetap bahawa rukun undang-undang mempunyai kedua-dua dimensi prosedur dan yang substantif. Adalah juga jelas daripada autoriti-autoriti bahawa ianya hak asasi yang dijamin oleh perkara 5(1) bahawa hidup atau kebebasan peribadi seseorang tidak boleh dinafikan dengan syarat menurut tindakan negeri yang adil dari segi prosedur dan kepentingannya. Apabila prinsip ini digunakan dalam kes jenayah bermaksud bahawa tertuduh mempunyai hak yang dijamin perlembagaan untuk menerima perbicaraan yang adil, termasuk haknya membuat penghujahan tiada kes di penutup kes pendakwaan dan bahawa dia tidak boleh mengetepikan hak ini atau dinafikannya. Walau bagaimanapun, dalam kes ini tertuduh tidak menerima perbicaraan yang adil dan perkara 5(1) telah dilanggar. Oleh itu di penutup kes pendakwaan, mahkamah perbicaraan hendaklah meminta penghujahan daripada tertuduh dan dengan itu adalah terbuka kepada tertuduh untuk memilih sama ada untuk membuat penghujahan atau tidak, namun mahkamah tidak boleh menafikannya peluang untuk membuat penghujahan tiada kes untuk dijawab (lihat 16, perenggan 18–19). B C D E

(3) Kes perayu sepertimana dikemukakan kepada saksi-saksi pendakwaaan berkaitan adalah bahawa dia tidak ditahan pada masa dia keluar daripada kereta abangnya tetapi bahawa dia ditangkap dalam kawasan rumah No 52. Kegagalan pegawai penyiasat untuk menyiasat pengataan ini meskipun telah dimaklumkan tentang fakta ini semasa penyiasatan merupakan peninggalan yang serius. Inferens menyebelahi tertuduh patut diberikan oleh hakim perbicaraan di penutup kes pendakwaan berdasarkan keterangan pegawai penyiasat (lihat perenggan 21). F G

(4) Kenyataan awal detektif kepada pegawai penyiasat bahawa dadah tersebut telah ditemui di rumah No 52 dan bahawa lapan orang telah ditangkap berkaitan serbuan tersebut tidak konsisten dengan keterangannya di mahkamah. Ini mempunyai kesan yang menjadikan keterangannya dicurigai dan akan menghendaki penghakim fakta mengendalikan keterangan tersebut dengan berhati-hati. Tambahan pula, terdapat keterangan berasingan yang menunjukkan bahawa tertuduh tidak mungkin membawa beg yang mengandungi kanabis itu kerana cap jarinya tiada pada beg tersebut. Ini sepatutnya bercanggah secara serius dengan keterangan detektif dan inspektor pada perkara yang penting tetapi malangnya perkara ini tidak diutarakan oleh hakim perbicaraan. Pendek kata terdapat jurang luas dalam kes pendakwaan H I

apabila ia ditutup, kerana terdapat keraguan serius berhubung sama ada tertuduh telah ditangkap apabila dia keluar dari kereta tersebut atau semasa dalam kawasan rumah No 52; adalah tidak berapa munasabah yang tertuduh membawa beg mengandungi kanabis tersebut; dan pendakwaan gagal membuktikan bagaimana dadah yang dipersoalkan telah ditemui. Bahkan terdapat satu lagi inferens yang boleh dibuat berdasarkan keterangan pendakwaan dan ianya undang-undang tetap bahawa dalam keadaan sedemikian inferens yang paling menyebelahi tertuduh patut diberikan (lihat perenggan 22–23).

(5) Suatu tribunal yang sewajar yang menjurus kepada undang-undang yang boleh dipakai dan mengambilkira keterangan secara kehakiman akan melepaskan tertuduh di akhir kes pendakwaan. Kegagalan hakim perbicaraan untuk mengendalikan penilaian maksimum ke atas keterangan Inspektor, pegawai penyiasat dan detektif dalam kes ini telah mengakibatan salah laksana keadilan (lihat perenggan 24 & 26).]

Notes

For a case on right to fair hearing, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 2174.

For a case on trafficking, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 126–127.

Cases referred to

AK Gopalan v State of Madras AIR 1950 27–96 (not folld)

Alcontara a/l Ambross Anthony v PP [1996] 1 MLJ 209, FC (refd)

Badan Peguam Malaysia v Kerajaan Malaysia [2008] 2 MLJ 285, FC (refd)

Balachandran v PP [2005] 2 MLJ 301, FC (refd)

Barat Estates Sdn Bhd & Anor v Parawakan a/l Subramaniam & Ors [2000] 4 MLJ 107, CA (refd)

Boyce v The Queen [2004] UKPC 32, PC (refd)

Chow Kok Keong v PP [1998] 2 MLJ 237, FC (refd)

Council of Civil Service Unions & Ors v Minister for the Civil Service [1985] AC 374, HL (refd)

Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29, FC (refd)

Dr Mohd Nasir Hashim v Menteri Dalam Negeri Malaysia [2006] 6 MLJ 213, CA (refd)

Government of Malaysia v Loh Wai Kong [1979] 2 MLJ 33, FC (not folld)

Hinds v The Queen [1976] 1 All ER 353, SC (refd)

Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia [1969] 2 MLJ 129, FC (not folld)

Krishna Murthy v Abdul Subban [1965] 1 Cr LJ 565 (refd)

Lake v Lake [1955] P 336, CA (refd)

Leung Kwok Hung v The Hong Kong Special Administrative Region [2005] 887 HKCU 1 (refd)
Loh Wai Kong v Government of Malaysia [1978] 2 MLJ 175, FC (not folld)
Maneka Gandhi v Union of India AIR 1978 SC 597 (refd)
Mohamed bin Kasdi v PP [1969] 1 MLJ 135, HC (refd)
Mraz v The Queen (1955) 93 CLR 493 (refd)
Om Kumar v Union of India AIR 2000 SC 3689 (refd)
Ong Ah Chuan v PP [1981] 1 MLJ 64, PC (folld)
Pierson v Secretary of State for the Home Department [1997] 3 All ER 577 (refd)
PP v Chong Boo See [1988] 3 MLJ 292, HC (not folld)
PP v Choo Chuan Wang [1992] 2 CLJ 1242, HC (refd)
PP v Ishak bin Hj Shaari [2003] 4 MLJ 585, FC (refd)
PP v Lim Ah Bek [1989] 2 CLJ 1090, HC (refd)
PP v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393, FC (refd)
PP v Parnaby [1953] MLJ 163, HC (not folld)
PP v Wong Kok Wah [2000] 1 MLJ 609, CA (not folld)
Prince Pinder v The Queen [2002] UKPC 46, PC (refd)
R v Lord Chancellor ex p Witham [1997] 2 All ER 779, HC (refd)
Ratten v The Queen (1974) 131 CLR 510, HC (refd)
Sambhu Nath Sarkar v State of West Bengal AIR 1973 SC 1425 (refd)
Tan Boon Liat, Re [1977] 2 MLJ 108, FC (folld)

Legislation referred to

Constitution of the Republic of Singapore arts 9, 12
Courts of Judicature Act 1964 s 92
Criminal Procedure Code ss 180, 180(1), 422
Criminal Procedure Code [IND] s 422
Dangerous Drugs Act 1952 s 39B(1)(a)
Federal Constitution arts 5, 5(1), 8, 8(1)
Interpretation Acts of 1948 and 1967 s 66

Appeal from: Criminal Appeal No A-05–49 of 2002 (Court of Appeal, Putrajaya)

Hisham Teh Poh Teik (Gobind Singh Deo with him) (Teh Poh Teik & Co) for the appellant.
Saiful Edris Zainuddin (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Gopal Sri Ram FCJ (delivering judgment of the court):

[1] The appellant was convicted by the High Court at Ipoh for trafficking 420g of cannabis, an offence under s 39B(1)(a) of the Dangerous Drugs Act

A 1952. He was sentenced to death. He appealed to the Court of Appeal which affirmed the High Court's decision. He then appealed to us. We heard this appeal on 28 July 2009 and allowed it. The appellant's conviction was quashed, his sentence was set aside and he was ordered to be set at liberty forthwith. We now give reasons for our decision.

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[2] The gist of the prosecution's case is this. On 4 April 2000 at about 4pm, PW4 ('Inspector Hilimi bin Ahmad'), acting on information received laid an ambush at the scene of the incident, namely, Jalan Selasar 10, Taman Ipoh Jaya, Ipoh. PW4 was accompanied by several police personnel, including C PW8 ('Detective Lance Corporal Magendran'). At about that time, the appellant arrived at the scene. He was driving motorcar ABA 6363 which was established in evidence to belong to his brother PW5. He parked the car adjacent to house No 52. He emerged from the car, carrying a white plastic bag exh P13. He was almost immediately accosted by PW4 and PW8. PW4 D identified himself as a police officer. The appellant then attempted to flee. He was overpowered and placed under arrest. PW4 found exh P13 to contain a substance which on subsequent chemical examination was found to be 420g of cannabis. The appellant was then charged for trafficking drugs.

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[3] In the course of the prosecution case it was established that on 4 April 2000, the appellant and his family had gone to the grave sites of their relatives at Jalan Tambun, Ipoh and then at Tanjong Tualang as it was Cheng Beng or All Souls Day. Later, the family returned home. PW5 and the appellant then F cleared PW5's car of the paraphernalia that had been taken to the grave sites. The appellant asked for PW5's permission to use the latter's car to visit friends. PW5 agreed but asked that he be dropped off at his place of work. The appellant drove the car with PW5 in it. There is evidence on record to show that during the journey PW5 did not see P13 in his car. After having G dropped off PW5, the appellant proceeded to the scene.

[4] At the close of the prosecution case, the learned trial judge ruled that he did not wish to hear submissions as he was satisfied that the prosecution had made out a prima facie case as required by s 180(1) of the Criminal Procedure H Code. This ruling formed the first ground of complaint before us. The second complaint is that the learned trial judge failed to judicially appreciate the evidence thereby misdirecting himself which misdirection has occasioned a miscarriage of justice.

I **[5]** Taking the first ground, the issue here is whether a court acting under s 180(1) is entitled to quote from the subsection: 'consider whether the prosecution has made out a prima facie case against the accused' without affording the accused an opportunity to make a submission of no case. No doubt the subsection does not expressly confer such a right upon an accused.

However, counsel submitted that his client has a constitutionally guaranteed right to a fair procedure by virtue of art 5(1)of the Federal Constitution. He argued that this right had been violated by reason of the learned judge's ruling. This is an important submission and calls for careful consideration.

[6] The first step in the inquiry is to ascertain whether there is such a constitutionally guaranteed right as asserted by the appellant. As Laws J said in *R v Lord Chancellor ex p Witham* [1997] 2 All ER 779:

> Where a written constitution guarantees a right, there is no conceptual difficulty. The state authorities must give way to it, save to the extent that the constitution allows them to deny it. There may of course be other difficulties, such as whether on the constitution's true interpretation the right claimed exists at all.

Whether the right claimed in the instant case exists at all turns on the interpretation of art 5(1) which provides that: 'No person shall be deprived of his life or personal liberty, save in accordance with law.' Before we embark upon that interpretive exercise, it is important to bear in mind the principles that govern the interpretation of the Federal Constitution.

[7] In the first place, the Federal Constitution is the supreme law of the Federation. Though by definition it is a written law (see s 66 of the Consolidated Interpretation Acts of 1948 and 1967) it is not an ordinary statute. Hence, it ought not to be interpreted by the use of the canons of construction that are employed as guides for the interpretation of ordinary statutes. Indeed, it would be misleading to do so. As Lord Diplock said in *Hinds v The Queen* [1976] 1 All ER 353 at p 359:

> To seek to apply to constitutional instruments the canons of construction applicable to ordinary legislation in the fields of substantive criminal or civil law would, in Their Lordships' view, be misleading …

We must here say that the contrary view expressed by Mukherjee J in *AK Gopalan v State of Madras* AIR 1950 27–96 and by the former Federal Court in *Government of Malaysia v Loh Wai Kong* [1979] 2 MLJ 33 (where the court said: 'It is well-settled that the meaning of words used in any portion of a statue and *the same principle applies to a constitution* depends on the context in which they are placed ...' (emphasis added) is clearly wrong and should no longer be followed. As for *Gopalan*'s case, it was for all practical purposes overruled by the Indian Supreme Court in *Sambhu Nath Sarkar v State of West Bengal* AIR 1973 SC 1425. What remained of *Gopalan* was swept away by the decision in *Maneka Gandhi v Union of India* AIR 1978 SC 597. And as for the decision in *Loh Wai Kong*, it was a case which the Government of Malaysia succeeded before the High Court. Neverthelesss, it purported to appeal against certain observations made by Gunn Chit Tuan J (later Chief Justice of Malaya) in the course of his judgment. As the law then stood and

indeed as it still stands even today, a litigant who has succeeded at first instance has no right of appeal against a decision given wholly in his or her favour. See *Lake v Lake* [1955] P 336. The former Federal Court therefore had no jurisdiction to hear the matter. Yet it entertained the appeal and purported to allow it when the final order of the High Court was in the appellant's favour. Hence, the views expressed in *Loh Wai Kong* are worthless as precedent.

[8] In the second place, the Constitution is a document sui generis governed by interpretive principles of its own. In the forefront of these is the principle that its provisions should be interpreted generously and liberally. On no account should a literal construction be placed on its language, particularly upon those provisions that guarantee to individuals the protection of fundamental rights. In our view, it is the duty of a court to adopt a prismatic approach when interpreting the fundamental rights guaranteed under Part II of the Constitution. When light passes through a prism it reveals its constituent colours. In the same way, the prismatic interpretive approach will reveal to the court the rights submerged in the concepts employed by the several provisions under Part II. Indeed the prismatic interpretation of the Constitution gives life to abstract concepts such as 'life' and 'personal liberty' in art 5(1). There are several authorities in support of this view. We will refer to some of them. And we begin at home with the case of *Dato Menteri Othman bin Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, where Raja Azlan Shah Ag LP (as His Royal Highness then was) said:

> In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters or ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way 'with less rigidity and more generosity than other Acts' (see *Minister of Home Affairs v Fisher)* [1973] 3 All ER 21. A constitution is sui generis, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: 'A constitution is a legal instrument given rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition and rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect of those fundamental rights and freedoms.' The principle of interpreting constitutions 'with less rigidity and more generosity' was again applied by the Privy Council in *Attorney-General of St Christopher, Navis and Anguilla v Reynolds* [1979] 3 All ER 129 at p 136.

It is in the light of this kind of ambulatory approach that we must construe our Constitution. A

[9] The next case is *Boyce v The Queen* [2004] UKPC 32, where Lord Hoffmann said: B

> Parts of the Constitution, and in particular the fundamental rights provisions of chapter III, are expressed in general and abstract terms which invite the participation of the judiciary in giving them sufficient flesh to answer concrete questions. The framers of the Constitution would have been aware that they were invoking concepts of liberty such as free speech, fair trials and freedom from cruel punishments which went back to the enlightenment and beyond. And they would have been aware that sometimes the practical expression of these concepts what limits on free speech are acceptable, what counts as a fair trial, what is a cruel punishment had been different in the past and might again be different in the future. But whether they entertained these thoughts or not, the terms in which these provisions of the Constitution are expressed necessarily co-opts future generations of judges to the enterprise of giving life to the abstract statements of fundamental rights. C D

[10] The courts of Hong Kong have adopted a similar approach when interpreting their basic law. In *Leung Kwok Hung v The Hong Kong Special Administrative Region* [2005] 887 HKCU 1, Li CJ when delivering the unanimous judgment of the Court of Final Appeal said: E

> It is well established in our jurisprudence that the courts must give such a fundamental right a generous interpretation so as to give individuals its full measure. *Ng Ka Ling v Director of Immigration* [1999] 2 HKCFAR 4 at p 28–9. On the other hand, restrictions on such a fundamental right must be narrowly interpreted. *Gurung Kesh Bahadur v Director of Immigration* [2002] 5 HKCFAR 480 at para 24. Plainly, the burden is on the government to justify any restriction. This approach to constitutional review involving fundamental rights, which has been adopted by the court, is consistent with that followed in many jurisdictions. Needless to say, in a society governed by the rule of law, the courts must be vigilant in the protection of fundamental rights and must rigorously examine any restriction that may be placed on them. (Emphasis added.) F G

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[11] We return home to end our citation of the authorities. In the recent case of *Badan Peguam Malaysia v Kerajaan Malaysia* [2008] 2 MLJ 285, this court in the judgment of Hashim Yusoff FCJ approved, inter alia, the following passage in the judgment of the Court of Appeal in *Dr Mohd Nasir Hashim v Menteri Dalam Negeri Malaysia* [2006] 6 MLJ 213: I

> The long and short of it is that our Constitution especially those articles in it that confer on our citizens the most cherished of human rights must on no account be given a literal meaning. It should not be read as a last will and testament. If we do that then that is what it will become.

More importantly, the majority of this court in *Badan Peguam Malaysia* also accepted the omnipresence of art 8(1) of the Constitution when interpreting its other provisions. And that brings us to the next principle of interpretation.

[12] The third principle is this. A court when interpreting the other provisions of our Constitution, in particular, those appearing in Part II thereof, must do so in the light of what has been correctly referred to as 'the humanising and all pervading provisions of art 8(1)' (see *Barat Estates Sdn Bhd & Anor v Parawakan a/l Subramaniam & Ors* [2000] 4 MLJ 107). That article reads: 'All persons are equal before the law and entitled to the equal protection of the law.' In *Badan Peguam Malaysia* this court in the majority judgment of Hashim Yusoff FCJ also accepted and applied the following statement of the Court of Appeal in *Dr Mohd Nasir Hashim v Menteri Dalam Negeri Malaysia*:

> When interpreting the other parts of the Constitution, the court must bear in mind all the providing provision of art 8(1). That article guarantees fairness of all forms of State action. See, *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan* [1996] 1 MLJ 261.

The effect of art 8(1) is to ensure that legislative, administrative and judicial action is objectively fair. It also houses within it the doctrine of proportionality which is the test to be used when determining whether any form of state action (executive, legislative or judicial) is arbitrary or excessive when it is asserted that a fundamental right is alleged to have been infringed. See *Om Kumar v Union of India* AIR 2000 SC 3689.

[13] The fourth principle of constitutional interpretation is this. Whilst fundamental rights guaranteed by Part II must be read generously and in a prismatic fashion, provisos that limit or derogate those rights must be read restrictively. As Lord Nicholls of Birkenhead and Lord Hope of Craighead in the Privy Council case of *Prince Pinder v The Queen* [2002] UKPC 46 said in their joint dissent:

> It should never be forgotten that courts are the guardians of constitutional rights. A vitally important function of court is to interpret constitutional provisions conferring rights with the fullness needed to ensure that citizens have the benefit these constitutional guarantees are intended to afford. Provision derogating from the scope of guaranteed rights are to be read restrictively. In the ordinary course they are to be given 'strict and narrow', rather than broad, constructions': see *The State v Petrus* [1985] LRC (Const) 699 at p 720d-f, per Aguda JA in the Court of Appeal of Botswana, applied by Their Lordships' Board in *R v Hughess* [2002] 2 AC 259 at p 277 part 35.

This passage was quoted with approval by the majority of this court in the *Badan Peguam Malaysia* case. So much for the interpretive principles.

[14] When art 5(1) is read prismatically and in the light of art 8(1), the concepts of 'life' and 'personal liberty' housed in the former are found to contain in them other rights. Thus, 'life' means more than mere animal existence and includes such rights as livelihood and the quality of life (see *Tan Tek Seng*'s case). And 'personal liberty' includes other rights such as the right to travel abroad. See *Loh Wai Kong v Government of Malaysia* [1978] 2 MLJ 175, where Gunn Chit Tuan J said that 'personal liberty' includes 'liberty to a person not only in the sense of not being incarcerated or restricted to live in any portion of the country but also includes the right to cross the frontiers in order to enter or leave the country when one so desires'.

[15] We next move to consider the expression 'according to law' appearing in art 5(1). It is counsel's submission that the expression 'law' includes procedural law. In support he cited the judgment of Lee Hun Hoe CJ (Borneo) in *Re Tan Boon Liat* [1977] 2 MLJ 108 where the learned Chief Justice held that:

> … in accordance with law in art 5 of our Constitution is wide enough to cover procedure as well. Here the point is not whether the question of procedure is more important under one Constitution than under the other. If the expression 'in accordance with law' were to be construed as to exclude procedure then it would make nonsense of art 5.

With respect we agree. It is equally our misfortune that we find ourselves in disagreement with the contrary view expressed by Suffian LP in the same case and in *Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129. In our judgment what art 5(1) strikes down is all forms of state action that deprive either life or personal liberty bearing a meaning of the widest amplitude in contravention of substantive or procedural law.

[16] We next turn to consider the expression 'law'. It is defined by art 160(2) of the Constitution as follows:

> 'Law' includes written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof.

'Common law' is defined by s 66 of the Consolidated Interpretation Acts of 1948 and 1967 as follows:

> 'common law' means the common law of England

We resort to s 66 in Part II of the Consolidated Acts as it expressly states that it applies to 'every written law as hereinafter defined, and in all public documents enacted, made or issued before or after 31st January 1948'. Since the Constitution is a written law that came into force in 1957, that is to say, after 31 January 1948, it is Part II that must be utilised to interpret the

supreme law. The rule of law forms part and parcel of the common law of England. And the rules of natural justice which form part of the wider concept of 'procedural irregularity' formulated by Lord Diplock in *Council of Civil Service Unions & Ors v Minister for the Civil Service* [1985] AC 374 are an integral part of the rule of law. Accordingly, the rule of law in all its facets and dimensions is included in the expression 'law' wherever used in the Constitution. Hence, the expression 'law' in art 5(1) includes written law and the common law of England, that is to say the rule of law and all its integral components and in both its procedural and substantive dimensions. For, it is now settled that the rule of law has both procedural and substantive dimensions. See *Pierson v Secretary of State for the Home Department* [1997] 3 All ER 577, where at p 606, Lord Steyn said: 'The rule of law in its wider sense has procedural and substantive effect.'

[17] We also find support for the view we have expressed from the judgment of Lord Diplock in *Ong Ah Chuan v Public Prosecutor* [1981] 1 MLJ 64, where, when dealing with arts 9 and 12 of the Singapore Constitution which are identical to arts 5 and 8 respectively he said:

> In a constitution founded on the Westminister model and particularly in that part of it that purports to assure to all individual citizens the continued enjoyment of fundamental liberties or rights, references to 'law' in such contexts as 'in accordance with law', 'equality before the law', 'protection of the law' and the like, in Their Lordships' view, refer to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation in Singapore at the commencement of the Constitution. It would have been taken for granted by the makers of the Constitution that the 'law' to which citizens could have recourse for the protection of fundamental liberties assured to them by the Constitution would be a system of law that did not flout those fundamental rules.

It is clear from this passage that the rules of natural justice, which is the procedural aspect of the rule of law, is an integral part of arts 5(1) and 8(1). In short, procedural fairness is incorporated in these two articles.

[18] Drawing the threads together, it is clear from the authorities that it is a fundamental right guaranteed by art 5(1) that a person's life (in its widest sense) or his or her personal liberty (in its widest sense) may not be deprived save in accordance with state action that is fair both in point of procedure and substance. Whether an impugned state action is substantively or procedurally fair must depend on the fact pattern of each case. However, when the principle is applied to a criminal case, what it means is that an accused has a constitutionally guaranteed right to receive a fair trial by an impartial tribunal and to have a just decision on the facts. If there is an infraction of any of these rights, the accused is entitled to an acquittal. Whether there has been a fair trial by an impartial tribunal or a just decision depends on the facts

of each case. While upon the subject under discussion we would refer with approval to the judgment of Edgar Joseph Jr J (as he then was) in *Public Prosecutor v Choo Chuan Wang* [1992] 2 CLJ 1242, where he held that:

> Article 5(1) of our Constitution does imply in favour of an accused person the right to a fair hearing within a reasonable time by an impartial court established by law. It follows that if an accused person can establish a breach of this right then, in the words of Sandhawalia CJ in *Madheshwardhari Singh v The State (ibid) (Madheshwardhari Singh and Anor v State of Bihar* AIR (Pat) 1986 324), he would be entitled to an unconditional release and the charges levelled against him would fall to the ground.

[19] We must consider the impact of what we have said thus far on the facts of the instant case. In our judgment, the constitutionally guaranteed right in an accused to a fair trial includes his right to make a submission of no case at the close of the prosecution's case. It is a right that he or she may waive. But he or she cannot be deprived of it. That unfortunately is what happened here. The accused accordingly did not have a fair trial and art 5(1) was violated. Following *Public Prosecutor v Choo Chuan Wang* he is entitled to have his conviction set aside on this ground. We would add that the view expressed by Bellamy J in *Public Prosecutor v Parnaby* [1953] MLJ 163 that a trial court is not bound to hear submissions at the close of the prosecution case is not correct. Neither are the decisions that have followed it, namely *Public Prosecutor v Chong Boo See* [1988] 3 MLJ 292 and *Public Prosecutor v Wong Kok Wah* [2000] 1 MLJ 609. In our judgment, a trial court must, at the close of the prosecution case, invite submissions from an accused. It is then open to the accused to say that he or she does not wish to make a submission. But if he or she does not make that election, he or she must be heard. It is however open to the court, after it has heard those submissions to reject them and call for the defence without affording the prosecution a right to reply. This course does no harm to the prosecution. But what the trial court cannot lawfully do is to deprive an accused of his constitutionally guaranteed right to a fair trial by denying him or her of the opportunity to make a submission of no case.

[20] The violation of the appellant's art 5(1) right to a fair trial is not, as we observed very early in this judgment, the only ground of complaint. There is also complaint made that the learned trial judge failed to judicially appreciate the evidence. And it is this ground we now turn to address.

[21] There are three important evidential points. We take the first. The appellant's case as put to the relevant prosecution witnesses was that he was not apprehended the moment he emerged from the car. He was arrested in the compound of house No 52 PW3, the investigation officer confirmed under cross examination that the appellant had, during investigations,

A informed her of this fact. She however failed to investigate this allegation at all. This is a serious omission. In *Public Prosecutor v Lim Ah Bek* [1989] 2 CLJ 1090 there was a doubt whether the investigating officer in that case had investigated the defence of alibi mentioned by the accused in his cautioned statement. Based on this possible omission, Gunn Chit Tuan J (as he then B was) drew an inference in favour of the accused in that case. The present case is much stronger in that there was no investigation at all. An inference in the appellant's favour ought therefore to have been drawn by the learned judge at the close of the prosecution case. Had that been done, doubt would have been cast upon the evidence of PW4 and PW8. Unfortunately this point was C missed by the learned trial judge, no doubt, because of his ruling. If he had heard the submission of no case by the appellant, he may perhaps have not acted upon the evidence of these two witnesses.

D **[22]** The second evidential point is this. PW3 confirmed under cross examination that PW8 had informed her that earlier on the day of the appellant's arrest, at about 4 am, drugs had been recovered from house No 52 and that eight persons had been arrested in connection with that raid. The public prosecutor relies on the testimony of PW8 who in his evidence denied that such a recovery or arrest had taken place. But this overlooks the real E issue. At issue was PW8's credibility. He did not in his evidence deny that he had told PW3 about the 4am raid and arrests. The fact remains that PW8 had made a previous statement to PW3 which was inconsistent with his evidence in court. This, at the very least, had the effect of rendering his evidence suspect. It most certainly required the trier of fact to approach that evidence F with caution. As Ali J (later Ag LP) said in *Mohamed bin Kasdi v Public Prosecutor* [1969] 1 MLJ 135:

> No hard and fast rule can be laid down for determining the credibility or otherwise of a witness, but when a witness gives or makes two statements which differ in G material particulars there must necessarily be ground for believing that he is not a truthful witness.

[23] The third evidential point relates to the issue whether the appellant was carrying exh P13. It was accepted by PW8 that if the appellant had been H carrying exh P13 in the manner demonstrated to the court by the witness, the appellant's fingerprints would appear on that exhibit. It was, however, established under PW3's cross-examination that exh P13 had been sent for fingerprinting and that the appellant's fingerprints were not on the said

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exhibit. The independent evidence showed that the appellant could not have been carrying exh P13. It therefore seriously contradicted the evidence of PW4 and PW8 on a material point. Unfortunately this part of the case does not appear to have been addressed by the learned trial judge.

[24] Gathering the relevant material, the state of the prosecution evidence at the close of its case was this. There was a serious doubt whether the appellant was arrested when emerging from the car or in the compound of house No 52. It was highly improbable that the appellant was carrying exh P13. Hence the prosecution had failed to establish how the drug in question came to be recovered. This left a large gap in the prosecution case. On this point there is the added fact that PW8 had been contradicted on the question as to whether there had been, earlier the same day, drugs had been recovered from premises No 52 and that eight persons had been arrested. If true, then the drug that formed the subject matter of the charge may have come from there. At the very least there was more than one inference that could fairly be drawn from the prosecution evidence. And it is settled law that in that state of affairs the inference most favourable to the appellant should have been drawn.

[25] What was required of the learned trial judge at the close of the prosecution case was to undertake a maximum or positive evaluation of all the evidence tendered at that stage. In *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393, the test to be applied under s 180 at the close of the prosecution case was stated as follows:

> This requires the court to undertake a maximum evaluation of the prosecution evidence when deciding whether to call on the accused to enter upon his or her defence. It involves an assessment of the credibility of the witnesses called by the prosecution and the drawing of inferences admitted by the prosecution evidence. Thus, if the prosecution evidence admits of two or more inferences, one of which is in the accused's favour, then it is the duty of the court to draw the inference that is favourable to the accused. See *Tai Chai Keh v Public Prosecutor* [1948–49] MLJ Supp 105, *Public Prosecutor v Kasmin bin Soeb* [1974] 1 MLJ 230. If the court, upon a maximum evaluation of the evidence placed before it at the close of the prosecution case, comes to the conclusion that a prima facie case has not been made out, it should acquit the accused. If, on the other hand, the court after conducting a maximum evaluation of the evidence comes to the conclusion that a prima facie case has been made out, it must call for the defence. If the accused then elects to remain silent, the court must proceed to convict him.

[26] In *Balachandran v Public Prosecutor* [2005] 2 MLJ 301 this court in its judgment delivered by Augustine Paul FCJ observed as follows:

> The result is that the force of the evidence adduced must be such that, if unrebutted, it is sufficient to induce the court to believe in the existence of the facts stated in the charge or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts exist or did happen. On the other hand if a prima facie case has not been made out it means that there is no material evidence which can be believed in the sense as described earlier. In order to make a finding either way the court must, at the close of the case for the prosecution, undertake a positive evaluation of the credibility and reliability of all the evidence adduced so as to determine whether the elements of the offence have been established.

[27] It is plain from what we have said when discussing the evidence that a reasonable tribunal properly directing itself on the applicable law and judicially appreciating the evidence would have acquitted the appellant at the close of the prosecution case. The failure of the learned judge to undertake a maximum or positive evaluation of the evidence of PW3, PW4 and PW8 has in the present case resulted in a substantial miscarriage of justice. We are therefore unable to accept the invitation of the learned deputy public prosecutor to apply the proviso to s 92 of the Courts of Judicature Act 1964. In this context we would refer to three authorities which are in our judgment of assistance on the way in which the proviso should be applied. The first is *Mraz v The Queen* (1955) 93 CLR 493, where Fullagar J said:

> … every accused person is entitled to a trial in which the relevant law is correctly explained to the jury and the rules of procedures and evidence are strictly followed. If there is any failure in any of these respects, and the appellant may thereby have lost a chance which was fairly open to him of being acquitted, there is, in the eye of the law, a miscarriage of justice. Justice has miscarried in such cases, because the appellant has not had what the law says that he shall have, and justice is justice according to law.

[28] The second case is *Ratten v The Queen* (1974) 131 CLR 510 at p 516 where, Barwick CJ, explained the way in which the proviso is to be applied to particular circumstances. He said:

> Miscarriage is not defined in the legislation but its significance is fairly worked out in the decided cases. There is a miscarriage if on the material before the Court of Criminal Appeal, which where no new evidence is produced will consist of the evidence given at the trial, the appellant is shown to be innocent, or if the court is of the opinion that there exists such a doubt as to his guilt that the verdict of guilty should not be allowed to stand. It is the reasonable doubt in the mind of the court which is the operative factor. It is of no practical consequence whether this is expressed as a doubt entertained by the court itself, or as a doubt which the court decides that any reasonable jury ought to entertain. If the court has a doubt, a

reasonable jury should be of a like mind. But I see no need for any circumlocution; as I have said it is the doubt in the court's mind upon its review and assessment of the evidence which is the operative consideration.

[29] The last authority is *Krishna Murthy v Abdul Subban* [1965] 1 Cr LJ 565 at p 576 where Hegde J said:

> The expression 'a failure of justice has in fact occasioned thereby' found in s 535(1) of the Cr PC does not connote that the court should be of the opinion that an innocent person has been convicted or the case against the accused person is not made out beyond reasonable doubt. An accused person is entitled to be acquitted whether there was a fair trial or not if no case is made out against him. For that purpose the Legislature need not have introduced the conception of 'failure of justice' in ss 535 and 537 of the Cr PC. The 'failure of justice' mentioned therein is that occasioned by the contravention of the provisions in Chapter XIX, Cr PC. In law the expression 'justice' comprehends not merely a just decision but also a fair trial. Sections 535 and 537 of the Cr PC have primarily in view a fair trial. For the purpose of those sections a denial of fair trial is denial of justice. One of the contents of natural justice, which is so much valued, is the guarantee of a fair trial to an accused person. A fair trial is as important as a just decision. Neither the one nor the other can be sacrificed. Sacrifice of the one, in the generality of cases, is bound to lead to the sacrifice of the other. The two are closely interlinked.

Although *Krishna Murthy v Abdul Subban* was a decision on the Indian equipollent of s 422 of the Criminal Procedure Code, the expressions 'failure of justice' and 'miscarriage of justice' have the same meaning in the context of determining whether a conviction should be upheld despite a misdirection by the trial judge. See *Public Prosecutor v Ishak bin Hj Shaari* [2003] 4 MLJ 585. We would add for good measure that the misdirection or non-direction by a judge unto himself is to be treated on the same footing as a misdirection by a judge to a jury. See *Alcontara a/l Ambross Anthony v Public Prosecutor* [1996] 1 MLJ 209.

[30] Before we conclude, we must add that the Court of Appeal appears to have missed the points we have made in this judgment. We are therefore unable to agree with their decision. In our judgment, quite apart from the constitutional point, the appellant's conviction was plainly unsafe having regard to the facts and evidence as they stood at the close of the case for the prosecution. The learned trial judge clearly erred in the way he handled the facts and that in itself is sufficient ground for the appellate interference. See *Chow Kok Keong v Public Prosecutor* [1998] 2 MLJ 237.

A **[31]** For the reasons already given, the appeal was allowed, the conviction was quashed and the sentence set aside.

Appeal allowed.

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Reported by Kohila Nesan

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